

WO

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

Richard LeGrand Gause,) No. CV 11-714-PHX-RCB (MEA)
Plaintiff,)
vs.) **ORDER**
J. Vicklund, et al.,)
Defendants.)

16 Plaintiff Richard LeGrand Gause, who is confined in the Arizona State Prison
17 Complex-Eyman in Florence, Arizona, has filed a *pro se* civil rights Complaint pursuant to
18 42 U.S.C. § 1983 (Doc. 1) and an Application to Proceed *In Forma Pauperis* (Doc. 2). The
19 Court will order Defendant Vicklund to answer the Complaint and will dismiss Defendant
20 Ryan without prejudice.

I. Application to Proceed *In Forma Pauperis* and Filing Fee

22 Plaintiff's Application to Proceed *In Forma Pauperis* will be granted. 28 U.S.C.
23 § 1915(a). Plaintiff must pay the statutory filing fee of \$350.00. 28 U.S.C. § 1915(b)(1).
24 The Court will assess an initial partial filing fee of \$16.06. The remainder of the fee will be
25 collected monthly in payments of 20% of the previous month's income each time the amount
26 in the account exceeds \$10.00. 28 U.S.C. § 1915(b)(2). The Court will enter a separate
27 Order requiring the appropriate government agency to collect and forward the fees according
28 to the statutory formula.

1 **II. Statutory Screening of Prisoner Complaints**

2 The Court is required to screen complaints brought by prisoners seeking relief against
 3 a governmental entity or an officer or an employee of a governmental entity. 28 U.S.C.
 4 § 1915A(a). The Court must dismiss a complaint or portion thereof if a plaintiff has raised
 5 claims that are legally frivolous or malicious, that fail to state a claim upon which relief may
 6 be granted, or that seek monetary relief from a defendant who is immune from such relief.
 7 28 U.S.C. § 1915A(b)(1), (2).

8 A pleading must contain a “short and plain statement of the claim *showing* that the
 9 pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2) (emphasis added). While Rule 8 does not
 10 demand detailed factual allegations, “it demands more than an unadorned, the-defendant-
 11 unlawfully-harmed-me accusation.” Ashcroft v. Iqbal, 129 S. Ct. 1937, 1949 (2009).
 12 “Threadbare recitals of the elements of a cause of action, supported by mere conclusory
 13 statements, do not suffice.” Id.

14 “[A] complaint must contain sufficient factual matter, accepted as true, to ‘state a
 15 claim to relief that is plausible on its face.’” Id. (quoting Bell Atlantic Corp. v. Twombly,
 16 550 U.S. 544, 570 (2007)). A claim is plausible “when the plaintiff pleads factual content
 17 that allows the court to draw the reasonable inference that the defendant is liable for the
 18 misconduct alleged.” Id. “Determining whether a complaint states a plausible claim for
 19 relief [is] . . . a context-specific task that requires the reviewing court to draw on its judicial
 20 experience and common sense.” Id. at 1950. Thus, although a plaintiff’s specific factual
 21 allegations may be consistent with a constitutional claim, a court must assess whether there
 22 are other “more likely explanations” for a defendant’s conduct. Id. at 1951.

23 But as the United States Court of Appeals for the Ninth Circuit has instructed, courts
 24 must “continue to construe *pro se* filings liberally.” Hebbe v. Pliler, 627 F.3d 338, 342 (9th
 25 Cir. 2010). A “complaint [filed by a *pro se* prisoner] ‘must be held to less stringent standards
 26 than formal pleadings drafted by lawyers.’” Id. (quoting Erickson v. Pardus, 551 U.S. 89,
 27 94 (2007) (*per curiam*)).

28

1 **III. Complaint**

2 In his one-count Complaint, Plaintiff sues Defendants Arizona Department of
 3 Corrections (ADOC) Senior Chaplain J. Vicklund and ADOC Director Chuck Ryan.

4 Plaintiff alleges a violation of his First Amendment right to the free exercise of his
 5 religion. He claims that he is recognized by the ADOC as being an Orthodox Jew, but
 6 Defendant Vicklund denied Plaintiff's request to follow the recognized dietary observances
 7 of his religion—a kosher diet. Plaintiff contends that providing him with a kosher diet does
 8 not burden the ADOC because the ADOC already provides a kosher diet to recognized
 9 "Jewish prefer[e]nce" inmates.

10 In his Request for Relief, Plaintiff seeks a kosher diet and monetary damages.

11 **IV. Claims for Which an Answer Will be Required**

12 Liberally construed, Plaintiff has stated a First Amendment free-exercise claim against
 13 Defendant Vicklund. The Court will require Defendant Vicklund to answer the Complaint.

14 **V. Failure to State a Claim**

15 To the extent Plaintiff's claim against Defendant Ryan is predicated on Defendant
 16 Ryan's denial of Plaintiff's grievance regarding Plaintiff's request for a kosher diet, this is
 17 insufficient to state a claim against Defendant Ryan. See Shehee v. Luttrell, 199 F.3d 295,
 18 300 (6th Cir. 1999) (defendants did not commit constitutional violations when they denied
 19 administrative grievances, failed to intervene on plaintiff's behalf, and failed to remedy
 20 allegedly unconstitutional behavior).

21 To the extent Plaintiff's claim is predicated on Defendant Ryan's position as the
 22 Director of the ADOC, this too is insufficient to state a claim against Defendant Ryan. There
 23 is no *respondeat superior* liability under § 1983, and therefore, a defendant's position as the
 24 supervisor of persons who allegedly violated Plaintiff's constitutional rights does not impose
 25 liability. Monell v. New York City Department of Social Services, 436 U.S. 658, 691-92
 26 (1978); Hamilton v. Endell, 981 F.2d 1062, 1067 (9th Cir. 1992); Taylor v. List, 880 F.2d
 27 1040, 1045 (9th Cir. 1989). "Because vicarious liability is inapplicable to Bivens and § 1983

28

1 suits, a plaintiff must plead that each Government-official defendant, through the official's
2 own individual actions, has violated the Constitution." Iqbal, 129 S. Ct. at 1948.

3 Therefore, the Court will dismiss without prejudice Defendant Ryan.

4 **VI. Warnings**

5 **A. Release**

6 Plaintiff must pay the unpaid balance of the filing fee within 120 days of his release.
7 Also, within 30 days of his release, he must either (1) notify the Court that he intends to pay
8 the balance or (2) show good cause, in writing, why he cannot. Failure to comply may result
9 in dismissal of this action.

10 **B. Address Changes**

11 Plaintiff must file and serve a notice of a change of address in accordance with Rule
12 83.3(d) of the Local Rules of Civil Procedure. Plaintiff must not include a motion for other
13 relief with a notice of change of address. Failure to comply may result in dismissal of this
14 action.

15 **C. Copies**

16 Plaintiff must serve Defendant, or counsel if an appearance has been entered, a copy
17 of every document that he files. Fed. R. Civ. P. 5(a). Each filing must include a certificate
18 stating that a copy of the filing was served. Fed. R. Civ. P. 5(d). Also, Plaintiff must submit
19 an additional copy of every filing for use by the Court. See LRCiv 5.4. Failure to comply
20 may result in the filing being stricken without further notice to Plaintiff.

21 **D. Possible Dismissal**

22 If Plaintiff fails to timely comply with every provision of this Order, including these
23 warnings, the Court may dismiss this action without further notice. See Ferdik v. Bonzelet,
24 963 F.2d 1258, 1260-61 (9th Cir. 1992) (a district court may dismiss an action for failure to
25 comply with any order of the Court).

26 **IT IS ORDERED:**

27 (1) Plaintiff's Application to Proceed *In Forma Pauperis* (Doc. 2) is **granted**.

1 (2) As required by the accompanying Order to the appropriate government agency,
2 Plaintiff must pay the \$350.00 filing fee and is assessed an initial partial filing fee of \$16.06.

3 (3) Defendant Ryan is **dismissed** without prejudice.

4 (4) Defendant Vicklund must answer the Complaint.

5 (5) The Clerk of Court must send Plaintiff a service packet including the
6 Complaint (Doc. 1), this Order, and both summons and request for waiver forms for
7 Defendant Vicklund.

8 (6) Plaintiff must complete¹ and return the service packet to the Clerk of Court
9 within 21 days of the date of filing of this Order. The United States Marshal will not provide
10 service of process if Plaintiff fails to comply with this Order.

11 (7) If Plaintiff does not either obtain a waiver of service of the summons or
12 complete service of the Summons and Complaint on Defendant within 120 days of the filing
13 of the Complaint or within 60 days of the filing of this Order, whichever is later, the action
14 may be dismissed. Fed. R. Civ. P. 4(m); LRCiv 16.2(b)(2)(B)(I).

15 (8) The United States Marshal must retain the Summons, a copy of the Complaint,
16 and a copy of this Order for future use.

17 (9) The United States Marshal must notify Defendant of the commencement of this
18 action and request waiver of service of the summons pursuant to Rule 4(d) of the Federal
19 Rules of Civil Procedure. The notice to Defendant must include a copy of this Order. **The**
20 **Marshal must immediately file signed waivers of service of the summons. If a waiver**
21 **of service of summons is returned as undeliverable or is not returned by Defendant**
22 **within 30 days from the date the request for waiver was sent by the Marshal, the**
23 **Marshal must:**

24

25

26 ¹If a Defendant is an officer or employee of the Arizona Department of Corrections,
27 Plaintiff must list the address of the specific institution where the officer or employee works.
28 Service cannot be effected on an officer or employee at the Central Office of the Arizona
Department of Corrections unless the officer or employee works there.

1 (a) personally serve copies of the Summons, Complaint, and this Order upon
2 Defendant pursuant to Rule 4(e)(2) of the Federal Rules of Civil Procedure; and

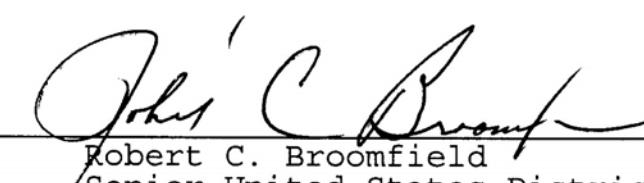
3 (b) within 10 days after personal service is effected, file the return of service
4 for Defendant, along with evidence of the attempt to secure a waiver of service of the
5 summons and of the costs subsequently incurred in effecting service upon Defendant.
6 The costs of service must be enumerated on the return of service form (USM-285) and
7 must include the costs incurred by the Marshal for photocopying additional copies of
8 the Summons, Complaint, or this Order and for preparing new process receipt and
9 return forms (USM-285), if required. Costs of service will be taxed against the
10 personally served Defendant pursuant to Rule 4(d)(2) of the Federal Rules of Civil
11 Procedure, unless otherwise ordered by the Court.

12 (10) **If Defendant agrees to waive service of the Summons and Complaint, he**
13 **must return the signed waiver forms to the United States Marshal, not the Plaintiff.**

14 (11) Defendant Vicklund must answer the Complaint or otherwise respond by
15 appropriate motion within the time provided by the applicable provisions of Rule 12(a) of
16 the Federal Rules of Civil Procedure.

17 (12) This matter is referred to Magistrate Judge Mark E. Aspey pursuant to Rules
18 72.1 and 72.2 of the Local Rules of Civil Procedure for all pretrial proceedings as authorized
19 under 28 U.S.C. § 636(b)(1).

20 DATED this 14th day of April, 2011.

21
22
23 
24 Robert C. Broomfield
25 Senior United States District Judge
26
27
28